

**United States District Court**  
**EASTERN DISTRICT OF TEXAS**  
**SHERMAN DIVISION**

§  
UNITED STATES OF AMERICA, §  
§  
v. § Case No. 4:11-CR-223 (1)  
§ Judge Mazzant  
§  
RAMIRO BENJUME PERDOMO §  
§

**MEMORANDUM OPINION AND ORDER**

Pending before the Court is Defendant's Motion for Sentence Reduction Pursuant to 18 U.S.C. 3582(c)(1)(A)(i) (Dkt. #854). Having considered the motion and the applicable law, the Court finds that the motion should be **DENIED without prejudice**.

**BACKGROUND**

On April 27, 2012, Defendant Ramiro Benjume Perdomo ("Perdomo") pleaded guilty to violations of 21 U.S.C. § 846 and § 841(b)(1)(A)—Conspiracy to Distribute and Possess with Intent to Distribute Heroin and Cocaine (Dkt. #307; Dkt. #707 at p. 1). On May 2, 2013, Perdomo was sentenced to 90 months of imprisonment followed by a 5-year term of supervised release (Dkt. # #705; Dkt. #707 at pp. 2–3). He is subject to deportation proceedings upon release from confinement (Dkt. #707 at pp. 2, 4).

Perdomo's sentence has already been reduced once before, from 90 months down to 60 months (Dkt. #759). However, during his supervised release period, Perdomo violated his supervised release conditions. This caused the Court to revoke his supervision and place him back in prison for another 33 months (Dkt. #834). Perdomo is currently serving that sentence at FCI Fort Dix with a projected release date of January 17, 2027 (Dkt. #854 at p. 4; Dkt. #854, Exhibit 1 at p. 1).

Perdomo now seeks a second reduction in sentence based on alleged “extraordinary and compelling reasons,” which Perdomo argues is “the Bureau of Prison’s inability to properly manage” the prisoners, which is evident because of the harsh conditions of the prison (Dkt. #854 at p. 1). On January 23, 2023, Perdomo filed the pending motion requesting compassionate release under 18 U.S.C. § 3582(c)(1)(A) (Dkt. #854).

## **LEGAL STANDARD**

### **I. 18 U.S.C. § 3582(c)(1)(A)**

A judgment of conviction imposing a sentence of imprisonment “‘constitutes a final judgment’ and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824 (2010) (quoting 18 U.S.C. § 3582(b)); *see also* 18 U.S.C. § 3582(c). One such circumstance arises from 18 U.S.C. § 3582(c)(1)(A)(i), commonly referred to as compassionate release.

Section 3582(c) was enacted as part of the Sentencing Reform Act of 1984. Under the first iteration of the relevant provision, district courts were authorized to grant sentence reductions on the motion of the Director of the Bureau of Prisons (“BOP”) if the BOP could establish the following conditions: (1) extraordinary and compelling reasons warranted a sentence reduction; (2) a reduction would be consistent with the applicable policy statements of the Sentencing Commission; and (3) a sentence reduction was warranted after consideration of the sentencing factors in 18 U.S.C. § 3553(a). *United States v. Shkambi*, 993 F.3d 388, 391 (5th Cir. 2021). Notably, Congress did not define “extraordinary and compelling reasons” or otherwise indicate how that phrase should be interpreted other than to specify that rehabilitation alone did not qualify. *Id.* (quoting 28 U.S.C. § 994(t)). Instead, Congress delegated that authority to the Sentencing Commission, directing it to “describe what should be considered extraordinary and compelling

reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” 28 U.S.C. § 994(t).

The Sentencing Commission eventually followed Congress’s direction to define “extraordinary and compelling reasons” and promulgated United States Sentencing Guidelines (“U.S.S.G.”) § 1B1.13. In application note 1 to § 1B1.13, the Sentencing Commission described what circumstances constitute “extraordinary and compelling reasons” for purposes of § 3582(c)(1)(A)(i). U.S.S.G. § 1B1.13 cmt. n.1. The Sentencing Commission essentially created four categories of “extraordinary and compelling reasons,” which can broadly be characterized as: (1) circumstances arising from certain medical conditions; (2) circumstances arising from the age of the defendant;<sup>1</sup> (3) issues arising from the defendant’s family circumstances;<sup>2</sup> and (4) other reasons that the BOP agrees are extraordinary and compelling in a specific case. *Id.* And because § 3582(c)(1)(A) requires that any sentence reduction be consistent with the Sentencing Commission’s policy statements issued pursuant to § 994(t), the policy statements contained in § 1B1.13 were binding on district courts considering § 3582(c)(1)(A)(i) motions. *See United States v. Garcia*, 655 F.3d 426, 435 (5th Cir. 2011) (holding that the Sentencing Commission’s policy statements issued pursuant to 28 U.S.C. § 994 are binding on district courts when considering motions brought under 18 U.S.C. § 3582(c)).

In 2018, Congress amended § 3582(c)(1)(A) with the passage of the First Step Act. The amendment provided that, in cases where the BOP does not file a compassionate-release motion

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<sup>1</sup> Specifically, a defendant, who is at least 65 years old, who “is experiencing a serious deterioration in physical or mental health because of the aging process” and also “has served at least 10 years or 75 percent of his or her term of imprisonment” may meet the requirement that “extraordinary and compelling reasons” exist. U.S.S.G. § 1B1.13, cmt. n.1(B).

<sup>2</sup> Such family circumstances exist where: (1) a defendant has minor children whose caregiver dies or becomes incapacitated; or (2) “incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.” U.S.S.G. § 1B1.13, cmt. n.1(C).

on the prisoner’s behalf, the prisoner may personally file a motion for compassionate release. *Shkambi*, 993 F.3d at 391–92. This was the First Step Act’s only change to the compassionate-release framework. *Id.* at 391. Thus, while prisoners, in addition to the BOP, may now file motions for compassionate release, § 3582(c)(1)(A)(i)’s substantive requirements that govern a prisoner’s entitlement to release remain the same. *See id.* at 392 (“But the [First Step Act] left undisturbed the other three § 3582 requirements.”).

Following the First Step Act’s expansion of who may file a motion under § 3582(c)(1)(A), courts were confronted with the question of whether the Sentencing Commission’s definition of “extraordinary and compelling reasons,” which was promulgated prior to the First Step Act when such motions could only be filed by the BOP, remained binding on district courts when considering compassionate-release motions. The Fifth Circuit addressed this question in *Shkambi*, holding that, while U.S.S.G. § 1B1.13 is a policy statement applicable to § 3582(c)(1)(A) motions filed by the BOP, it is inapplicable to § 3582(c)(1)(A) motions filed by prisoners. 993 F.3d at 392.<sup>3</sup> Accordingly, while U.S.S.G. § 1B1.13 dictates the meaning of “extraordinary and compelling reasons” when a § 3582(c)(1)(A) motion is filed by the BOP on a prisoner’s behalf, it does not do so when, as here, a § 3582(c)(1)(A) motion is filed by a prisoner himself. *See id.* (“[T]he policy statement continues to govern where it says it governs—on the motion of the Director of the [BOP]. But it does not govern here—on the newly authorized motion of a prisoner.” (internal quotations omitted)). Therefore, when a prisoner files a compassionate-release motion, courts must determine what constitutes an “extraordinary and compelling reason”

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<sup>3</sup> Several other circuits have similarly concluded that U.S.S.G. § 1B1.13 is inapplicable to such compassionate-release motions filed by prisoners. *See, e.g., United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (per curiam); *United States v. McCoy*, 981 F.3d 271, 281 (4th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020). *But see United States v. Bryant*, 996 F.3d 1243, 1248 (11th Cir. 2021) (holding that U.S.S.G. § 1B1.13 is an applicable, binding policy statement for all § 3582(c)(1)(A) motions).

under § 3582(c)(1)(A)(i).

## **II. Extraordinary and Compelling Reasons**

Though the Court is not bound by the Sentencing Commission’s policy statement in U.S.S.G. § 1B1.13 and its accompanying application notes when considering compassionate-release motions filed by prisoners, the policy statement is not wholly irrelevant. Courts should still look to the policy statement for guidance in determining what constitutes “extraordinary and compelling reasons” for a sentence reduction when a prisoner files a compassionate-release motion. *See United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (“Although not dispositive, the commentary to the [U.S.S.G.] § 1B1.13 informs our analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.”); *see also, e.g.*, *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) (“The substantive aspects of the Sentencing Commission’s analysis in § 1B1.13 and its Application Notes provide a working definition of ‘extraordinary and compelling reasons’; a judge who strikes off on a different path risks an appellate holding that judicial discretion has been abused.”). Using the policy statement as guidance when considering prisoner-filed compassionate-release motions is warranted for several reasons.

First, whether a compassionate-release motion is filed by the BOP or a defendant, the statutory standard governing the motion is the same. Section 3582(c)(1)(A) provides that its requirements for obtaining a sentence reduction apply “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant.” 18 U.S.C. § 3582(c)(1)(A). And as noted above, the First Step Act did not change § 3582(c)(1)(A)’s substantive requirements. Thus, a policy statement defining “extraordinary and compelling reasons” in the context of BOP-filed motions necessarily informs what “extraordinary and compelling” means in the context of defendant-filed

motions because the same standard governs both motions. In other words, § 3582(c)(1)(A)(i)'s "extraordinary and compelling reasons" phrase does not implicate shifting substantive meanings depending on who invokes the statute.

Congress's application of a single standard to govern § 3582(c)(1)(A) motions—whether filed by the BOP or by defendants—is also evident in § 3582(c)(1)(A)'s exhaustion requirement. Before a prisoner can file a compassionate-release motion, he must first present his case to the BOP and request that the BOP file the motion on his behalf. *See* 18 U.S.C. § 3582(c)(1)(A). Fulfilling this exhaustion requirement would be a nonsensical exercise if the standard governing the defendant's entitlement to release varied significantly depending on whether the BOP grants the defendant's request. Defendants would request compassionate release based on the interpretation of "extraordinary and compelling reasons" applicable to their motions while the BOP would evaluate such requests based on the interpretation applicable to its motions. The fact that defendants must first ask the BOP to file their compassionate-release motions before doing it themselves indicates that Congress intended no significant substantive distinction between BOP-filed and defendant-filed motions under § 3582(c)(1)(A).

Indeed, § 1B1.13 does not become useless as guidance for defendant-filed compassionate-release motions simply because its terms state that it applies to motions brought by the Director of the BOP. Rather, § 1B1.13 and its accompanying application notes "provide a working definition of 'extraordinary and compelling reasons'" because the standard applies equally to BOP motions and prisoner motions. *Gunn*, 980 F.3d at 1180. When the Sentencing Commission promulgated § 1B1.13, its intent was not to specify a unique standard for BOP motions but rather to define "extraordinary and compelling reasons" for purposes of § 3582(c)(1)(A).

Further, 28 U.S.C. § 994(t) does not direct the Sentencing Commission to adopt standards

governing prisoner motions and standards governing BOP motions. Rather, § 994(t) directs the Sentencing Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction” under § 3582(c)(1)(A). And as the Sentencing Commission itself has explained, U.S.S.G. § 1B1.13 and its application notes constitute the Commission’s implementation of § 994(t)’s directive. *See* U.S.S.G. § 1B1.13 cmt. background (“This policy statement implements 28 U.S.C. § 994(a)(2) and (t).”). Because § 3582(c)(1)(A) governs BOP motions and prisoner motions alike, the Sentencing Commission’s definition of § 3582(c)(1)(A)’s terms is instructive when considering a prisoner’s motion brought under § 3582(c)(1)(A)(i).

For these reasons, the Court concludes that the “extraordinary and compelling reasons” applicable to defendant-filed motions are generally those that are similar in kind and scope to those listed in U.S.S.G. § 1B1.13’s application notes. To be clear, the “extraordinary and compelling reasons” contained in the Sentencing Commission’s policy statement are neither exhaustive nor binding on the Court. *Shkambi*, 993 F.3d at 392. But, in any event, the Court’s analysis of whether Defendant has presented “extraordinary and compelling reasons” warranting the sentence reduction he seeks will be significantly guided—though not strictly bound—by the Sentencing Commission’s description in U.S.S.G. § 1B1.13 and the accompanying application notes.

### **III. 18 U.S.C. § 3553(a) Factors**

Even if extraordinary and compelling reasons exist, they must outweigh the 18 U.S.C. § 3553(a) factors to warrant sentence reduction. *See* 18 U.S.C. § 3582(c)(1)(A). These factors are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
  - (A) to reflect the seriousness of the offense, to promote respect for the law,

and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and sentencing range [provided for in the U.S.S.G.] . . .

(5) any pertinent [Sentencing Commission] policy statement . . .

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

*Id.* § 3553(a).

## ANALYSIS

Perdomo moves for compassionate release based on the conditions of FCI Fort Dix.<sup>4</sup>

Specifically, Perdomo alleges that the staff has: (1) reduced inmate movement; (2) prohibited “proper education, programming, and recreation;” and (3) limited visitation (Dkt. #854 at p. 2).

Although the Court approaches *pro se* motions with leniency, Gonzalez has provided no evidence indicating his request for an administrative remedy from the warden within his facility.

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<sup>4</sup> The Court recognizes that Perdomo makes references to his “previous prisons” and the “drastically different” conditions of prison today compared to how it used to be (Dkt. #854 at p. 2). The problem with these arguments is that the Court may not consider either argument for the requested relief. Regarding what the Court finds as a generalized complaint regarding the overall conditions of prisons, the Court finds that this is not an individualized point. The Court notes that compassionate releases are “rare” and “extraordinary,” and should not be granted to every prisoner. *United States v. Hurst*, No. 3:14-CR-128, 2021 WL 3719133, at \*5 (S.D. Miss. Aug. 20, 2021). If the Court may not grant a request regarding “generalized fear” of contracting COVID-19, then the Court holds that the same must be true regarding the general nature of prison conditions today. *United States v. Hardrick*, No. 10-202, 2021 WL 4460527, at \*3 (E.D. La. Sept. 29, 2021); *see also See United States v. Vasquez*, No. CR 2:18-1282-S-1, 2020 WL 3000709, at \*3 (S.D. Tex. June 2, 2020). As for Perdomo’s mention of his previous prisons, the Court finds that Perdomo has failed to show how this warrants a compelling or extraordinary reason given that Perdomo is no longer at those locations. The Court will not consider those two arguments. Instead, the Court will classify Perdomo’s argument that he is entitled to compassionate release based on the conditions of the current prison where he is located.

*See Howard v. Shelton*, 277 F.R.D. 168, 171 (S.D. Miss. 2011). In fact, Perdomo *admits* that “he has not filed with the warden, therefore he has not exhausted his remedies” (Dkt. #854). Perdomo attempts to provide a reason for his decision not to file—as he claims that the warden is no longer responding to compassionate release requests—but this cannot change the outcome.

While the Court is sympathetic to Perdomo’s position, the merits of his compassionate release motion may only be considered if he first meets § 3582(c)(1)(A)’s exhaustion requirement. The requirement states that a request for compassionate release is properly made by the Director of the BOP or by a defendant who has fully exhausted their administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Fully exhausting administrative remedies requires a denial by the warden of a defendant’s facility or waiting thirty days without receiving a response to a request, whichever is earlier. *Id.* Since Perdomo’s pending motion was filed by himself and not by the Director of the BOP, he must comply with this requirement.

Here, Perdomo states that “defendants are sitting for thirty days to wait on no response” (Dkt. #854 at p. 3). For those defendants, after the thirty days have expired, although they have not received a response from the warden, they will be eligible to submit their request to the relevant court. Perdomo did not follow the path of those defendants—as he never submitted a request—and therefore, § 3582(c)(1)(A)’s exhaustion requirement proves fatal to the pending request. As such, the Court has no other option, it must deny Perdomo’s motion at this time. *See United States v. Rivas*, 833 F. App’x 556, 558 (5th Cir. 2020) (“Because the statutory language is mandatory—that a prisoner must exhaust their BOP remedy before filing in district court—we must enforce this procedural rule . . .”).

Under the rule of finality, federal courts may not “modify a term of imprisonment once it has been imposed” unless one of a few “narrow exceptions” applies. *Freeman v. United States*,

564 U.S. 522, 526 (2011) (citing 18 U.S.C. § 3582(c)) (plurality op.); *see also Dillon*, 560 U.S. at 819 (same). Compassionate release is one of those exceptions, but a defendant must conform both to the procedural and substantive requirements of § 3582(c)(1)(A) for a court to modify a sentence. Because Perdomo has not met the controlling requirements for compassionate release set forth in § 3582(c)(1)(A)(i), his motion must be denied.

#### **CONCLUSION**

It is therefore **ORDERED** that Defendant's Motion for Sentence Reduction Pursuant to 18 U.S.C. 3582(c)(1)(A)(i) (Dkt. #854) is hereby **DENIED without prejudice**.

**IT IS SO ORDERED.**

**SIGNED** this 27th day of June, 2023.



AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE